

AMENDED IN SENATE JUNE 26, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 274

Introduced by Assembly Member Portantino

February 12, 2009

An act to add Section 43501.2 to, and to add Article 2.1 (commencing with Section 48010) to Chapter 2 of Part 7 of Division 30 of, the Public Resources Code, relating to solid waste.

LEGISLATIVE COUNSEL'S DIGEST

AB 274, as amended, Portantino. Solid waste: landfills: closure plans.

(1) The California Integrated Waste Management Act of 1989, which is administered by the California Integrated Waste Management Board (*board*), requires the owner or operator of a solid waste landfill, among other things, to prepare an initial estimate of closure and postclosure maintenance costs and to submit to the regional water board, the local law enforcement agency, and the board, a plan for the closure of the solid waste landfill and a plan for the postclosure maintenance of the solid waste landfill. A violation of these provisions is a misdemeanor.

This bill would prohibit the owner or operator of a closed solid waste landfill that is subject to a closure or a postclosure maintenance plan from selling or offering for sale any portion of a closed waste management unit unless the intended purchaser provides evidence, to the satisfaction of the board, of his or her ability to meet the financial assurance requirements of the act. By creating a new crime, the bill would impose a state-mandated local program.

(2) *Existing law requires an operator of a solid waste disposal facility to pay a quarterly fee to the State Board of Equalization based on the amount of solid waste disposed of at each disposal site. Commencing*

with the 1995–96 fiscal year, the act requires the board to establish the amount of the fee, as specified, and limits the fee to a maximum of \$1.40 per ton. The fees are required to be deposited in the Integrated Waste Management Account in the Integrated Waste Management Fund, and the board is authorized to expend the money in the account, upon appropriation by the Legislature, to administer and implement the act.

This bill on and after January 1, 2011, would, authorize an operator of a solid waste disposal facility that is required to meet financial assurance requirements and is in operation on September 1, 2010, to elect to participate in the State Solid Waste Postclosure Trust Fund created by this bill.

The bill would require that a participating operator pay a fee of \$0.12 per ton per disposal site that would be deposited in the fund and made available to the board for expenditure, upon appropriation by the Legislature, for postclosure activities and corrective actions not performed by the operator when a participating operator fails to comply with the board's final order, the financial assurance mechanisms are inadequate to fund necessary compliance activities, the solid waste landfill was operating pursuant to a valid solid waste facilities permit on or after January 1, 1988, and the board has first used and exhausted the financial assurance mechanism provided by the public operator.

The bill would also exempt participating operators from certain financial assurance requirements, and after 15 years of completed postclosure maintenance would allow participating operators, with board approval and meeting other requirements, to reduce the term of financial assurance.

The bill would require that the fee and this act would not be operative after July 1, 2010 unless the board receives, on or before July 1, 2010, letters of participation in the State Solid Waste Postclosure Trust Fund from landfill operators representing at least 50% of the total annual waste disposal volume in 2009.

(2)

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

*Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.*

The people of the State of California do enact as follows:

SECTION 1. Section 43501.2 is added to the Public Resources Code, to read:

43501.2. The owner or operator of a closed solid waste landfill that is subject to a closure or a postclosure maintenance plan may not sell or offer for sale any portion of a closed waste management unit unless the intended purchaser provides evidence, to the satisfaction of the board, of his or her ability to meet the financial assurance requirements of Article 4 ~~of Chapter 2 (commencing with Section 43600)~~ (commencing with Section 43600) of Chapter 2 of Part 4 of this division.

SEC. 2. Article 2.1 (commencing with Section 48010) is added to Chapter 2 of Part 7 of Division 30 of the Public Resources Code, to read:

Article 2.1. State Solid Waste Postclosure Trust Fund

48010. (a) *It is the intent of the Legislature to authorize the creation and maintenance of a State Solid Waste Postclosure Trust Fund dedicated exclusively to protecting the General Fund from expenditures resulting from the failure of the owner or operator of a closed solid waste landfill who was required to maintain evidence of financial ability pursuant to Article 4 (commencing with Section 43600) of Chapter 2 of Part 4 to comply with a final order from the board relating to compliance with postclosure and corrective action requirements.*

(b) *The State Solid Waste Postclosure Trust Fund is intended to allow the board to respond rapidly to violations of postclosure care and corrective action orders, thereby limiting environmental harm and threats to public health and safety.*

(c) *Participation in the State Solid Waste Postclosure Trust Fund is intended to be a voluntary decision by operators of operating landfills who are required to maintain evidence of financial ability pursuant to Article 4 (commencing with Section 43600) of Chapter 2 of Part 4.*

(d) *Since the existence of a State Solid Waste Postclosure Trust Fund will greatly reduce the impacts of financial defaults by operators during the postclosure period, it is the intent of the Legislature that owners or operators who participate in the trust*

1 *fund be subject to differing financial assurance requirements for*
2 *postclosure maintenance and nonwater quality corrective action*
3 *than those owners or operators who do not participate in the trust*
4 *fund.*

5 *(e) It is the intent of the Legislature that this article authorize*
6 *complete cost recovery by the state for expenditures from the State*
7 *Solid Waste Postclosure Trust Fund and that the trust fund be*
8 *preserved for its intended purpose.*

9 48011. (a) *On and after January 1, 2011, each operator of a*
10 *solid waste landfill that notifies the board that it elects to*
11 *participate in the State Solid Waste Postclosure Trust Fund shall*
12 *pay a fee quarterly to the State Board of Equalization that is based*
13 *on the amount, by weight or volumetric equivalent, as determined*
14 *by the board, of all solid waste disposed of at each disposal site.*

15 *(b) The fee shall be twelve cents (\$0.12) per ton and shall be*
16 *collected in the same manner as the solid waste disposal fee. The*
17 *board shall deposit proceeds from this fee in the State Solid Waste*
18 *Postclosure Trust Fund, which is hereby created in the State*
19 *Treasury. Fee revenues and all interest earned shall be available*
20 *to the board, upon appropriation by the Legislature, to carry out*
21 *the purposes of this article.*

22 *(c) The board shall notify the State Board of Equalization on*
23 *the first day of the period in which the rate shall take effect and*
24 *of any rate change adopted pursuant to this section.*

25 *(d) The board and the State Board of Equalization shall ensure*
26 *that all the fees for solid waste imposed pursuant to this section*
27 *that are collected at a transfer station are paid to the State Board*
28 *of Equalization in accordance with this article.*

29 48012. (a) (1) *An operator of a landfill that is required to*
30 *maintain evidence of financial ability pursuant to Article 4*
31 *(commencing with Section 43600) of Chapter 2 of Part 4 and is*
32 *operating on September 1, 2010, that elects to participate in the*
33 *State Solid Waste Postclosure Trust Fund pursuant to this article,*
34 *shall submit written notice to the board on or before September*
35 *1, 2010.*

36 *(2) An operator of multiple landfills that elects to participate*
37 *in the State Solid Waste Postclosure Trust Fund is required to*
38 *submit written notice that includes all of the operator's operating*
39 *landfills.*

1 ***(b) If an operator elects to participate after the trust fund fee***
2 ***goes into effect, the operator shall pay all back fees and a 5 percent***
3 ***penalty.***

4 ***(c) For new landfills that receive a solid waste facility permit***
5 ***after September 1, 2010, the operator's election to participate in***
6 ***the State Solid Waste Postclosure Trust Fund shall be submitted***
7 ***in writing to the board before the board concurs on the permit***
8 ***pursuant to Section 44009.***

9 ***(d) All elections made by landfill operators pursuant to this***
10 ***section are final, binding, and irrevocable.***

11 ***48013. (a) The board may only expend the money in the State***
12 ***Solid Waste Postclosure Trust Fund to pay for corrective action***
13 ***and postclosure activities that have not been performed by the***
14 ***operator of a solid waste landfill participating in the State Solid***
15 ***Waste Postclosure Trust Fund, and only upon a determination by***
16 ***the board that all of the following conditions are met:***

17 ***(1) The solid waste landfill owner or operator has failed to***
18 ***comply with a final order issued by the board.***

19 ***(2) The financial assurance mechanisms are inadequate to fund***
20 ***necessary compliance activities.***

21 ***(3) The solid waste landfill was operating pursuant to a valid***
22 ***solid waste facilities permit on or after January 1, 1988, when the***
23 ***state's requirements for solid waste landfill financial assurances***
24 ***went into effect as a result of Assembly Bill 2448 of the 1987–88***
25 ***Regular Session, and is required to have financial assurances***
26 ***pursuant to Sections 43600 to 43610.1, inclusive.***

27 ***(4) The board has first used and exhausted the financial***
28 ***assurance mechanism provided by the public operator.***

29 ***(b) The board may adopt regulations, if necessary, setting forth***
30 ***additional criteria for making expenditures from the State Solid***
31 ***Waste Postclosure Trust Fund.***

32 ***(c) Notwithstanding Section 10295 of the Public Contract Code,***
33 ***a contract entered into by the board for the purposes of this section***
34 ***is not subject to approval by the Department of General Services.***

35 ***(d) No liability or obligation is imposed on the state under this***
36 ***subdivision, and the board shall not incur any obligation beyond***
37 ***the extent to which money is expended from the State Solid Waste***
38 ***Postclosure Trust Fund pursuant to this section.***

39 ***(e) The board shall, to the maximum extent feasible, recover***
40 ***from the landfill operator the amount of money expended from the***

1 *State Solid Waste Postclosure Trust Fund, including a reasonable*
2 *amount for any contract administration costs of the board and an*
3 *amount equal to the interest that would have been earned on the*
4 *expended funds as the result of the operator's failure to comply*
5 *with the final order issued by the board. The board shall deposit*
6 *all funds recovered pursuant to an action authorized by this section*
7 *into the State Solid Waste Postclosure Trust Fund.*

8 *(f) The amount of any cost incurred by the board pursuant to*
9 *this section is recoverable from the landfill operator in a civil*
10 *action brought by the Attorney General pursuant to Section 40432.*

11 *(g) The board may impose a lien on the operator's assets or*
12 *real property as an additional remedy to recover funds from the*
13 *operator for expenditures from the State Solid Waste Postclosure*
14 *Trust Fund.*

15 *48014. On or before January 1, 2014, and every two years*
16 *thereafter, the board shall report to the Legislature on expenditures*
17 *from the State Solid Waste Postclosure Trust Fund, the status of*
18 *cost recovery actions, and any recommended statutory changes*
19 *that are required to ensure adequate resources are available to*
20 *carry out the purposes of the State Solid Waste Postclosure Trust*
21 *Fund.*

22 *48015. Notwithstanding Article 4 (commencing with Section*
23 *43600) of Chapter 2 of Part 4, operators participating in the State*
24 *Solid Waste Postclosure Trust Fund shall only be required to*
25 *demonstrate financial assurance for corrective actions relating to*
26 *the reasonable and foreseeable potential migration of landfill gas,*
27 *exclusive of the corrective action requirements of the regional*
28 *water quality control boards, unless the board determines, with*
29 *technical input from an independent third-party engineering firm,*
30 *that specific site conditions indicate that additional specific*
31 *corrective actions are required at the site.*

32 *48016. After 15 years of completed postclosure maintenance,*
33 *operators participating in the State Solid Waste Postclosure Trust*
34 *Fund, with board approval, may reduce the term of financial*
35 *assurance in five-year increments down to a minimum of five years*
36 *if all of the following requirements are met:*

37 *(a) The operator has not been issued an enforcement order*
38 *during the prior five-year period.*

39 *(b) The operator has performed enhanced monitoring activities*
40 *in conformance with the postclosure maintenance plan and*

1 applicable board regulations and has performed appropriate
2 maintenance and corrective action based on the monitoring.

3 (c) The operator demonstrates the remaining financial assurance
4 mechanism is adequate to cover all reasonably expected costs to
5 be incurred until the completion of the postclosure maintenance
6 period.

7 48017. (a) The fee imposed by Section 48011 and this article
8 shall not be operative after July 1, 2010 unless the board receives
9 on or before July 1, 2010, letters of participation in the State Solid
10 Waste Postclosure Trust Fund from landfill operators representing
11 at least 50 percent of the total annual waste disposal volume in
12 2009.

13 (b) An operator of multiple landfills that are required to
14 maintain evidence of financial ability pursuant to Article 4
15 (commencing with Section 43600) of Chapter 2 of Part 4 and that
16 are operating on July 1, 2010, is required to include all of the
17 operator's operating landfills in the letter of participation.

18 ~~SEC. 2.~~

19 SEC. 3. No reimbursement is required by this act pursuant to
20 Section 6 of Article XIII B of the California Constitution because
21 the only costs that may be incurred by a local agency or school
22 district will be incurred because this act creates a new crime or
23 infraction, eliminates a crime or infraction, or changes the penalty
24 for a crime or infraction, within the meaning of Section 17556 of
25 the Government Code, or changes the definition of a crime within
26 the meaning of Section 6 of Article XIII B of the California
27 Constitution.